

REMARKS

Applicant respectfully traverses the § 102(b) rejection of claims 1-6 over Auer '410.

Auer, as expressly recognized by the Examiner, does not disclose the claimed oxygen content in the catalyst layer, as recited in the present claims. The Examiner contends, however, that Auer inherently discloses the claimed oxygen content of claim 1. Moreover, the Examiner contends that because Auer teaches maintaining a Pt-Ru alloy colloid at a temperature between 20°C and 110°C, and calcining the catalyst under inert gas at temperatures between 200°C and 400°C, therefore, Auer inherently discloses the oxygen content regulating step and supporting steps recited in claims 3-6.

To more clearly recite the features of the present invention, applicant has amended claim 1 to recite that the catalyst layer comprises a plurality of PT-Ru alloy particles, and the oxygen content in an entirety of at least one particle is 4.4 wt. %, and applicant has amended claim 3 to recite a step of reducing an oxygen content in at least one particle in its entirety. Applicant has cancelled claim 2. Applicant has added new claims 9-11 to round out the coverage to which the invention is entitled.

Contrary to the Examiner's position, Auer does not inherently disclose the features of claims 1 and 3 related to oxygen content. With respect to the claim 1, the Examiner provides no support whatsoever for his erroneous assertion that Auer inherently reads on an oxygen content of 4.4 wt. % or less. It appears that the Examiner considers the process disclosed in Auer to be identical to the process disclosed in the present application, and thus inherently results in the claimed oxygen content, but this position is incorrect. In the present invention, as disclosed in the specification, a supporting step (e.g., a heat treatment performed at approximately

300°C to 800°C, and more specifically at 600°C, supports the catalyst layer on the carrier. An oxygen reducing step is then performed. In contrast, Auer only discloses calcining the catalyst at 200°C to 400°C. Thus, the Auer method is not the same as the disclosed method, and Auer gives no indication whatsoever that calcining alone in this temperature range will result in the claimed O₂ content. With respect to claim 3, the complete absence of one of the claimed steps demonstrates the inability of Auer to inherently disclose the elements of this claim.

Applicant also traverses the § 103(a) rejection of claims 1-8 over Ito '300. The oxygen content of the invention, as recited in the claims, applies to the entire portion of at least one Ru-PT alloy particle of the catalyst layer, whereas the oxygen content disclosed in Ito is found only at a surface of the catalyst layer, because Ito discloses that oxygen is bonded chemically to carrier conductive carbon at col. 3, lines 25-26, and col. 4, lines 51-52. Moreover, in Ito, after a heat treatment is complete, no subsequent oxygen reducing step is performed, as recited, e.g., in claim 3. Therefore, Ito does not suggest each feature of the claims and the § 103(a) rejection is unsupportable.

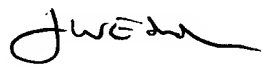
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: December 10, 2004

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